



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 09, 2022

IN THE MATTER OF:

Appeal Board No. 621403

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board No. 621402, the claimant appeals from the decision of the Administrative Law Judge filed February 3, 2022, which sustained the initial determination ruling the claimant not entitled to receive benefits, effective November 30, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law Section 527 because the claimant did not have sufficient earnings in either the basic or alternate base period of his claim.

In Appeal Board No. 621403, the claimant appeals from the decision of the Administrative Law Judge filed February 3, 2022, which sustained the initial determinations charging the claimant with an overpayment of \$13,104 in regular benefits recoverable pursuant to Labor Law § 597 (4); and an overpayment of

Federal Pandemic Unemployment Compensation (FPUC) benefits of \$6,900 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

In Appeal Board No. 621404, the claimant appeals from the decision of the Administrative Law Judge filed February 3, 2022, insofar as it sustained the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, on the basis that the claimant did not meet any of the criteria listed in sections 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020.

In Appeal Board Nos. 621405, an appeal was processed from the decision of the Administrative Law Judge filed February 3, 2022, which overruled the initial

determination holding the claimant ineligible to receive benefits, effective November 30, 2020, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

It now appears that in Appeal Board No. 621405, an appeal was processed to the Board through inadvertence. Since the Judge's decision is not adverse to the appellant's interests, the appellant has no standing to appeal from that decision.

We have reviewed the entire record and have considered the testimony and other evidence in Appeal Board No. 621402. It appears that no errors of fact or law have been made in that case. The findings of fact and the opinion of the Administrative Law Judge with respect to the issue of the claimant inability to file a valid original claim, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

As to the issues in Appeal Board Nos. 621403 and 621404, only, based upon the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: In early 2020, the claimant was a student at Hunter College studying Economics. In January or February 2020, the claimant interviewed for a part-time accounting/internship position at an accounting firm, and was offered the position. The claimant does not recall when he was supposed to begin working, but remembers that the job did not start because of COVID.

Beginning in June 2020, the claimant was employed in a temporary position working for the United States Census Bureau. He was employed in that position from June 2020 to October 2020. His job ended when the period of temporary employment was over.

In 2021, the claimant lived with his parents and two younger siblings (ages 10 and 11). In January or February 2021, the claimant's mother was diagnosed with COVID. Since the claimant's father was the family breadwinner, he and the two young children went to live with the claimant's aunt to keep from getting sick. The claimant stayed home to care for his mother. This care lasted about

two months, after which the claimant applied for unemployment benefits on March 3, 2021; his claim was made effective November 30, 2020.

On June 10, 2021, the Department of Labor mailed a monetary determination to the claimant indicating that he had wages in his base period from "Reins International" and "Paychex PEO III." The claimant never worked for either of these companies. The claimant did not receive the June 10, 2021 determination, and was unaware that a determination was issued in June 2021. On September 10, 2021, the Department of Labor mailed a Notice of Determination to the claimant which referenced the June 10, 2021 monetary determination. The claimant did not receive this September 10, 2021 Notice of Determination. The claimant was not aware of either the June 10, 2021 determination or the September 10, 2021 determination until December 10, 2021, when he spoke with a Department of Labor representative, after which he immediately requested a hearing. The claimant did not receive a copy of the June 2021 determination, or learn that the Department of Labor had information that he had worked for Reins International and Paychex PEO III until he received the hearing packet prior to the February 3, 2022 hearing.

After filing his claim, and prior to September 10, 2021, the claimant received \$13,104 in regular unemployment benefits, and \$6,900 in Federal Pandemic Unemployment Compensation (FPUC) benefits.

OPINION: The evidence establishes that after filing his claim for unemployment benefits, the claimant received \$13,104 in regular unemployment benefits, and \$6,900 in Federal Pandemic Unemployment

Compensation (FPUC) benefits. In light of our decision in Appeal Board No. 621402, which affirmed the hearing decision sustaining the determination that the claimant was unable to file a valid original claim for regular benefits because he did not have sufficient earnings in either the basic or alternate base period of his claim, the claimant was not entitled to receive benefits under that claim, and any benefits he did receive were overpaid. This includes both the regular benefits totaling \$13,104, and the FPUC benefits totaling \$6,900.

Under the Labor Law, regular unemployment benefits are recoverable when the claimant has made a factually false statement to receive them, or has accepted the benefits paid to him in bad faith. The latter is the sole basis for the recoverability of the regular benefits in this case. Specifically, the initial

determination states that the claimant did not accept the benefits in good faith because he did not work for the employers listed on the monetary determination notice mailed to him on June 10, 2021. However, the claimant has credibly testified that he never received the monetary determination dated June 10, 2021 which listed two employers for whom he had not worked. Since the evidence establishes that the claimant did not receive the determination, he could not have known that the Department of Labor had determined his eligibility and benefit rate based upon those two employers. We note that there is nothing in the record to suggest or establish that the claimant played any part in the reporting of wages from companies for which he did not work. Accordingly, we find that the claimant did not accept the overpaid regular benefits in bad faith, and conclude that those overpaid benefits are nonrecoverable.

However, pursuant to Section 2104 (f)(2) of the CARES Act of 2020, as amended by Section 261 of the Continued Assistance for Unemployment Workers Act of 2020, Federal Pandemic Unemployment Compensation (FPUC) benefits are recoverable if the claimant was not entitled to receive such benefits.

Since the credible evidence establishes that the claimant was not entitled to receive the FPUC benefits in the amount of \$6,900 because he was unable to file a valid original claim, we find, consistent with federal law, that the overpaid FPUC benefits are recoverable.

Regarding the issue of Pandemic Unemployment Assistance, the credible evidence fails to establish that the claimant meets any of the qualifying conditions of the CARES Act to be eligible to receive PUA benefits. Most significantly, and the reason that obviates the need for discussion of the others, the claimant's most recent employment prior to filing his claim for benefits-his temporary employment with the census bureau ended in October 2020 for reasons wholly unrelated to COVID. Thus, the claimant's separation from his most recent employer before filing a claim for PUA benefits (the separation at issue) was not a direct result of COVID, or any of the COVID factors set forth in the statute.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act § 2102 (h)

provides the following: "RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE

AND DISASTER UNEMPLOYMENT ASSISTANCE: Except as otherwise provided in this

section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if (1) the term 'COVID-19 public health emergency' were substituted for the term 'major disaster' each place it appears in such section 625; and (2) the term 'pandemic' were substituted for the term 'disaster' each place it appears in such section 625." Using the relevant substitution, the regulations at 20 CFR § 625.5 (c) provide in pertinent part

that, "For the purposes of paragraphs (a) (1) and (b) (1) of this section, a worker's or self-employed individual's unemployment is a direct result of the COVID-19 public health emergency where the unemployment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster."

As the Board has explicitly held, under the relevant statute and regulations, to be eligible for PUA, a claimant must, in the first instance, have become unemployed as a direct result of the COVID-19 public health emergency, before even considering whether the claimant's inability to work is due to COVID-19. See, Appeal Board Nos. 618195, 614822, and 613271. See also Appeal Board No. 620017. Even crediting the claimant's testimony that sometime in early 2020 he had an offer of part-time employment that did not materialize for reasons related to COVID, the evidence establishes that he had subsequent employment that ended for reasons wholly unrelated to the virus. At most, the claimant's continued unemployment in 2020 and 2021 was

the result of a longer chain of events that might have been exacerbated by the public health emergency, such

as his mother's illness in early 2021, but his unemployment was not a direct and immediate result of the COVID-19 public health emergency. Accordingly, we conclude that the claimant is not eligible to receive Pandemic Unemployment Assistance.

DECISION: In Appeal Board No. 621402, the decision of the Administrative Law Judge is affirmed.

In Appeal Board No. 621402, the initial determination ruling the claimant not entitled to receive benefits, effective November 30, 2020, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law Section 527 because the claimant did not have sufficient earnings in either

the basic or alternate base period of his claim, is sustained.

In Appeal Board No. 621403, the decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed

In Appeal Board No. 621403, the initial determinations charging the claimant with an overpayment of \$13,104 in regular benefits recoverable pursuant to Labor Law § 597 (4); and an overpayment of Federal Pandemic Unemployment

Compensation (FPUC) benefits of \$6,900 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are modified to the extent that the overpayment of regular unemployment benefits in the amount of \$13,104 is found to be nonrecoverable, and as so modified, are sustained.

In Appeal Board No. 621404, the decision of the Administrative Law Judge, insofar as appealed from, is affirmed.

In Appeal Board No. 621404, the initial determination holding the claimant ineligible to receive Pandemic Unemployment Assistance (PUA) benefits, on the basis that the claimant did not meet any of the criteria listed in sections 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) of 2020, is sustained.

The appeal in Appeal Board No. 621405 is dismissed. The decision of the Administrative Law Judge in that case remains in effect.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER

Federal law provides that New York State can waive repayment of Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), Lost Wages Assistance (LWA), Mixed Earners Unemployment Compensation (MEUC) or Pandemic Unemployment Assistance (PUA) benefits overpaid to the claimant if the overpayment was not the claimant's fault and repayment would be contrary to equity and good conscience. For more information on the overpayment waiver process and instructions to request a waiver, please visit the New York State Department of Labor's website, <https://dol.ny.gov/overpayment-waiver-and-appeal-process>.